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Supreme Court of the United States.

No. 59.—October Term, 1903.

Sarah A. Hibben, Plaintiff in Error, vs. William C. Smith et al. } In error to the Supreme Court of the State of Indiana.

[November 30, 1903.]

The plaintiff in error seeks by this writ to review the judgment of the Supreme Court of the State of Indiana, affirming a judgment in favor of one of the defendants in error, William C. Smith, foreclosing the lien of an assessment levied upon certain real estate in the town of Irvington, belonging to the plaintiff in error. The plaintiff Smith brought this action to foreclose the lien, and alleged in his complaint that he was the contractor for the doing of the work for a local improvement on Washington street in the town mentioned, and had complied with all the provisions of the statute and with his contract, and had finished the work and was entitled to payment for the same; that an assessment to provide for such payment had been duly imposed by the board of town trustees, upon the property abutting on the portion of the street where the improvement was made, and that the defendant Sarah A. Hibben was the owner of lots abutting on that improved portion of the street, and her assessment amounted to over five thousand dollars, which she had not paid; that the assessment was then due with six per centum interest, and the plaintiff prayed that the lien might be foreclosed against her property, and that it might be sold for the satisfaction of the assessment, and for other proper relief in the premises.

The defendant Hibben demurred to the complaint, and the same having been overruled, she filed an answer thereto. She also filed a cross complaint. The answer and cross complaint set up the same facts in substance and they both averred the unconstitutionality of the act of the legislature of Indiana providing for the improvement of streets under which the improvement in question was made, and also it was objected to the validity of the assessment that the alleged improvement was of no benefit to many of her lots, and that, on the contrary, the assessment upon such lots was greater than their value, and resulted in a substantial confiscation of her property in those lots; also that the assessment had been made by the front foot and without reference to the benefits received from the improvement, and that no hearing before the board of trustees was had and no consideration given to the question of whether or not the abutting property or any part thereof was specially benefited in an amount equal to, less

than or in excess of the amounts fixed by the assessments which were confirmed by such board, but on the contrary that the assessments were made and confirmed upon the theory and belief that the statutes of the State established the rule of assessment at the same fixed price per lineal front foot on each side for the whole improvement, and that no change could be made therein by the board of trustees, and that the board refused at such hearings to hear or consider any objection to the assessment based upon any inquiry into the amount of special benefit accruing to any abutting lot or parcel of land.

It was also averred in the answer and in the cross complaint that all the members of the board of trustees of the town of Irvington were residents of that town and taxpayers therein, and that two members of the board were owners of lots abutting upon said improvement and assessed therefor at the same rate per lineal front foot as the others, and it was averred that no assessment could legally be levied by such a board of trustees, and the assessment was for that reason wholly void.

These defenses contained in the answer and which were also set up in the cross complaint, were severally demurred to by the complainant Smith, and the demurrers sustained, and upon the refusal of the defendant Hibben to amend, judgment enforcing the lien was entered, which, upon appeal to the Supreme Court of Indiana, was affirmed.

Mr. Justice PECKHAM, after making the foregoing statement of facts, delivered the opinion of the Court.

The Supreme Court of the State of Indiana has held the statute to be constitutional under which this lien was established and judgment entered for its foreclosure. That court has held that under the State constitution an assessment arbitrarily by the front foot is unconstitutional, but that the statute in question provides only a rule of *prima facie* assessment by the front foot, and that such assessments are subject to review and alteration by the common council or board of trustees upon the basis of special benefits received from the improvement, and the common council and board of trustees not only have the power, but it is their imperative duty to adjust an assessment to conform to the actual special benefits accruing to each of the abutting property owners. (*Adams* v. *City of Shelbyville*, 154 Ind. 467; *Schaefer* v. *Werling*, 156 Id. 704; *Martin* v. *Wills*, 60 N. E. Rep. 102; *Leeds* v. *De Frees*, 61 Id. 930; *Shank* v. *Smith*, 61 Id. 932.)

Shaefer v. *Werling*, *supra*, has been affirmed upon writ of error by this court, (188 U. S. 516,) where it was held that the statute in question was not in conflict with the Constitution of the United States, and the principle was reiterated in that case that the construction placed by the highest court of a State upon a statute providing for paving the streets and distributing the assessment therefor was conclusive upon this court.

See also *Merchants & Manufacturers' Bank* v. *Pennsylvania*, (167 U. S. 461.)

The amount of benefits resulting from the improvement is a question of fact, and a hearing upon it being assumed, the decision of the board is final. No constitutional question of a Federal nature arises therefrom.

If the board of trustees refuse to hear the owners of property abutting the street improvement, in regard to the subject of benefits, and arbitrarily proceed to levy the assessment solely according to the front foot, the Supreme Court of Indiana has held that such lot owner was not without remedy, and that he could by mandamus or injunction compel a hearing as to the amount of the assessment upon each lot, or prevent the approval of the engineer's report until such hearing had been accorded, and that the lot owner could not waive such a remedy and make the denial of a hearing available as a defense in an action to collect the assessment. (*Shank* v. *Smith*, *supra*.) Under the cases above cited this court follows the decision of the Supreme Court of Indiana upon this question of remedy. The claim set up on the part of the lot owner, that there can be no due process of law under which an assessment can be made which does not provide for a review of such assessment and a hearing by a court, is not tenable. Assuming the necessity of a hearing before an assessment can be made conclusive, the law may provide for that hearing by the body which levies the assessment, and after such hearing may make the decision of that body conclusive. Although in imposing such assessments the common council or board of trustees may be acting somewhat in a judicial character, yet the foundation of the right to assess exists in the taxing power, and it is not necessary that in imposing an assessment there shall be a hearing before a court provided by the law in order to give validity to such assessment. Due process of law is afforded where there is opportunity to be heard before the body which is to make the assessment, and the legislature of a State may provide that such hearing shall be conclusive so far as the Federal Constitution is concerned.

In *Fallbrook Irrigation District* v. *Bradley*, (164 U. S. 112, 168,) it was said that—

"Due process of law is not violated, and the equal protection of the laws is given, when the ordinary course is pursued in such proceedings for the assessment and collection of taxes that has been customarily followed in the State, and where the party who may subsequently be charged in his property has had a hearing, or an opportunity for one provided by the statute."

And it was also said in that case that whether a review is or is not given upon any of these questions of fact, (that is, as to benefits and the amounts of the assessments,) was a mere question of legislative discretion, so long as the tribunal created by the State had power to decide them, and the

opportunity for a hearing was given by the act, and that it was not constitutionally necessary in such case to give a rehearing or an appeal.

In *Spring Valley Waterworks* v. *Schottler*, (110 U. S. 347,) where the law provided for the fixing of water rates by a board of supervisors after a hearing, and without any right of review by any court, it was stated (at page 354) by Mr. Chief Justice Waite, giving the opinion of the court:

"Like every other tribunal established by the legislature for such a purpose, their duties are judicial in their nature, and they are bound in morals and in law to exercise an honest judgment as to all matters submitted for their official determination. It is not to be presumed that they will act otherwise than according to this rule." See *Spencer* v. *Merchant*, (125 U. S. 345.)

The sole remaining question arises upon the allegations contained in the answer and cross complaint, that all the members of the board of trustees were residents of the town and taxpayers therein, and that two members of the board were owners of lots abutting upon the improvement, and assessed therefor at the same rate as the others.

The objection to the tribunal constituted by the legislature of Indiana, which the plaintiff in error makes in this particular instance, is that it results in making a person a judge in his own case, and that hence any judgment of a tribunal thus constituted is absolutely void, and may be attacked, as it is attacked in this case, collaterally. It is said that to impose an assessment, which is the same as a judgment under such circumstances is to take the lot owner's property without due process of law, and violates thereby the Federal Constitution. We think the first objection, that all of the members of the board of trustees were residents of and taxpayers in the town, is wholly unimportant. We have not the slightest doubt of the power of a legislature of a State, unless hampered by some special constitutional provision, to create a tribunal in a city or town, such as the common council or board of trustees, to make an assessment, and that such assessment would be valid, notwithstanding the fact that every member of the board was a taxpayer of the city or the town. It is a matter of legislative discretion as to how such a board shall be constituted, and we hazard nothing in saying that it is quite common throughout the country for the legislatures of the States to create a tribunal for levying assessments for local improvements in a manner precisely like the case in question. It is not at all analogous, even in principle, to a judge of a court acting in a case in which he was personally interested.

To say that no one who was a taxpayer in a city or town could act in imposing an assessment upon property therein is to say that the legislature is wholly without power, by reason of the Federal Constitution, to constitute a tribunal to make an assessment where such tribunal is composed

of taxpayers in the city or town. This we do not believe. It must frequently happen that a board of assessors for a city, to assess all property for general taxation, will be composed of men who themselves own property in the city and assess the same for purposes of such taxation. Can there be any doubt of the validity of the general assessments under such circumstances? And would not the assessment for taxation of the property of the individual members of the board of assessors, made by the board, be valid if authorized by the statute? See *Brown* v. *Massachusetts*, 144 U. S. 573, (citing 147 Mass. 585, 591; 150 Id. 334, 343.)

Then as to the averment that there were two members of the board who were owners of lots abutting upon the improvement and were assessed therefor at the same rate as other lot owners. Although it might have been more seemly for those two members, if they recollected the fact of such ownership, to have refused to act in the matter, yet there is nothing to show that their attention was called to the fact, nor does it appear that any objection was made by plaintiff in error or any one else to their acting, nor that the plaintiff in error was ignorant of their interest at the time when the proceedings were commenced. The State court has held that an assessment for improvements under this statute of Indiana is in the nature of a judgment, and the fact that members of the board who levied the assessment owned property, as stated, would not render the judgment void, but at most, voidable, and that it could not be attacked collaterally. The cases of *Bradley* v. *City of Frankfort*, (99 Ind. 417;) *Jackson* v. *Smith*, (120 Id. 520,) and *Board of Commissioners* v. *Justice et al.*, (133 Id. 89,) are referred to.

Whether a judgment obtained in a case like this, where two members of a general board created by statute for the purpose of making it, had some interest in some of the property subject to the assessment, was a void or voidable judgment, is a proper question for the State court to decide. A State court has the right to place its own construction upon its own judgments, and where, as in a case like this, it holds that the judgment is not void and that it cannot be attacked collaterally, we ought to follow that determination. (*Newport Light Company* v. *Newport*, 151 U. S. 527, 539.)

In *Lent* v. *Tillson*, (140 U. S. 316,) which was an assessment case, it was stated by Mr. Justice Harlan, in delivering the opinion of the court, (p. 333,) as follows:

"Other objections have been urged by the plaintiffs which we do not deem it necessary to consider. For instance, it is said that the mayor of the city of San Francisco, one of the board of commissioners, was himself the owner of a lot on Dupont street, and, for that reason, was incompetent to act as one of the board of street commissioners. . . . In respect to

all these and like objections, it is sufficient to say that they do not necessarily involve any question of a Federal nature, and so far as this court is concerned, are concluded by the decision of the Supreme Court of California."

The provisions of the Fourteenth Amendment do not cover such an objection as is now under consideration. The general system of procedure for the levying and collection of taxes which is established in this country is, within the meaning of the Constitution, due process of law. (*Kelly* v. *Pittsburgh*, 104 U. S. 78.) A provision made by the legislature of a State in relation to the manner of levying an assessment for a local improvement is within this principle a proceeding for the levying and collection of taxes, and unless it be in violation of some particular provision of the Federal Constitution, it will be upheld in this court. The Fourteenth Amendment, it has been held, legitimately operates to extend to the citizens and residents of the States the same protection against arbitrary State legislation, affecting life, liberty and property, as is offered by the Fifth Amendment against similar legislation by Congress; but that the Federal courts ought not to interfere when what is complained of amounts to the enforcement of the laws of a State applicable to all persons in like circumstances and conditions, and that the Federal courts should not interfere unless there is some abuse of law amounting to confiscation of property or a deprivation of personal rights, such as existed in the case of *Norwood* v. *Baker*, (172 U. S. 269.)

These principles have been reiterated in a series of cases reported in 181 U. S., commencing with *French* v. *Barber Asphalt Paving Company*, at page 324 of that volume.

The facts contained in the objection now under discussion do not, in our judgment, constitute any violation of the Federal Constitution or result in the taking of the property of the plaintiff in error without due process of law, as that term is understood, when used in the Constitution of the United States. We see no error in the record in this case which we can review, and the judgment of the Supreme Court of Indiana is

Affirmed.

Mr. Justice WHITE concurred in the result.

True copy.

Test:

Clerk Supreme Court, U. S.